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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 1115

DONALD L. DUNCAN,
Petitioner

vs

STATE OF CONNECTICUT,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. .....

DONALD L. DUNCAN,
Petitioner

vs

STATE OF CONNECTICUT,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

Petitioner prays that a writ of certiorari issue to review the judgment of the Connecticut Supreme Court entered in the above entitled cause on December 4, 1962.

The Petitioner petitions for a writ of certiorari to review an order of the Connecticut Supreme Court entered on December 4th 1962, dismissing an appeal from the Superior Court of the State of Connecticut entered on June 27, 1962, which dismissal was entered without an opinion from said Court.

JURISDICTION

The Judgment of the Connecticut Supreme Court was entered on December 4th, 1962. Jurisdiction of this Court is invoked pursuant to 28 U. S. C. section 1257 (2), which permits this Court to review cases in which there is a substantial Federal question.

STATUTES INVOLVED

The statutory provisions involved are sections 36-306 and 36-313 of the General Statutes of the State of Connecticut Revision of 1958, and sections 36-267 of the General Statutes, Revision of 1958, which is set forth in Appendix A along with section 36-265 defining the language in the above sections.

QUESTIONS INVOLVED

A

Whether the petitioner was deprived of due process of law and the equal protection of the laws in violation of Section I Article 14 of the Amendments to the Constitution of the United States by:

(a) The refusal of the trial court Judge to disqualify himself as trier of the cause in view of the claim of prejudice arising from proceedings before trial on May 17, 1962.

(b) The decision of the trial court that Sections 36-267, 36-306 and 36-313 are Constitutional as applied to the evidence in the cause of the petitioner; and

(c) The refusal of the Connecticut Supreme Court of Errors to hear and decide on its substantive merits the appeal of the petitioner from the Judgment of the Superior

Court, thereby leaving in effect as a final judgment the finding of guilty made by the Superior Court, which proposes to execute the penalties imposed as above stated.

B

Whether Sections 36-267 and 36-306 and 36-313 of the Connecticut General Statutes, in their enactment and enforcement, are repugnant to the due process clause of Amendment 14, Article I of the Constitution of the United States in failing to prescribe adequate standards, and in failing to define criminal conduct with sufficient definiteness and clarity.

C

Whether the judgment of the Superior Court, in failing to specify particular portion of the Statutes the Petitioner was adjudged to have transgressed, contravened the due process clause and the equal protection of the laws clause of the Constitution of the United States Amendment 14, Section I.

D

Whether the Supreme Court, in dismissing the appeal from the Superior Court; deprived the petitioner of a right to his day in Court and impared his freedom, all of which are repugnant to the due process clause and the equal protection of the law clause of the Constitution of the United States, Amendment 14, Section I.

E

Whether the Appellant was guilty as charged.

On April 9, 1963 Associate Justice of the United States Supreme Court John M. Harlan extended the time through May 13, 1963, for filing Petition for Writ of Certiorari.

On May 13, 1963 Associate Justice John M. Harlan extended the time through May 20, 1963 for filing Petition for Writ of Certiorari.

STATEMENT OF FACTS

Appellant was arraigned on a warrant charging him with the crime of Selling or Offering for Sale Securities as a Broker, Dealer or Salesman without having registered with the Bank Commissioner of the State of Connecticut, in violation of Section 36-267 of the General Statutes of Connecticut Revision of 1958, and was sentenced on this Count to one year confinemet to the State Jail and fined $1,000.00 pursuant to Section 36-313 of the General Statutes of the State of Connecticut, Revision of 1958;

And the Petitioner was further arraigned and convicted on a Second Count of the crime of Selling or Offering for Sale Oil or Mining Securities without having received permission for the sale of such securities from the State Bank Commissioner in violation of Section 36-306 of said Statute, and was sentenced on this Second Count to one year confinement in the State Jail and fined $1,000.00 pursuant to Section 36-313 of such Statutes; said sentences of confinement in the State Jail to be served concurrently.

Said petitioner, a resident of New York City, did solicit and sell oil leases located in the State of New Mexico, confining said solicitation and sales to one individual within the State or Connecticut. Section 36-265 of the General Statutes of the State of Connecticut, Revision 1958, defines sales, stating it must be an attempt to publicly dispose of a security. See Appendix A, 36-265.

The Petitioner was tried before the Honorable Thomas F. Troland, Judge of the Superior Court of the State of Connecticut, sitting without a Jury on June 26, 1962. On June 27, 1962 the Petitioner was found guilty of both counts and appealed therefrom from the judgment therein to the Supreme Court of the State of Connecticut.

In pursuance thereof the Petitioner filed on the 19th day of October, 1962, a draft finding, "Appendix B." and on October 25, 1962 the Respondent made a motion to dismiss said appeal, "Appendix B.", which motion to dismiss was granted on Dec. 1, 1962.

On the 26th day of November, 1962, the Petitioner made a request for a Draft Finding to the Superior Court for Hartford County, and on November 28, 1962, made a motion for permission to File a Request for Finding and Permission to Amend the Draft Finding, all of which appears in Appendix B, along with a Motion to Reargue, which motion was denied.

All of the above attempted by statute to place a simple real estate transaction involving only one individual in the category of a security transaction discriminating this type of sale from sales normally carried on by real estate agents by calling this sale a security transaction requiring a security license.

Petitioner further states that he was deprived of pursuing this matter further by appeal to the Connecticut Supreme Court when said Court unjustifiably dismissed said appeal, although good cause appeared for the granting of the same, thereby placing the liberty of the petitioner in jeopardy by the enforcement of the Superior Court judgment.

REASONS FOR GRANTING WRIT

During the trial the Petitioner raised the question of the Constitutionality of the Statute involved. Thereafter the right to proceed further on appeal was taken away from the Petitioner and said Appeal was dismissed.

In the case of *Snyder* vs *Mass.* 291 U.S. 97, the Court held

> "What may not be taken away under the 14th Amendment is notice of the charge and an adequate opportunity to be heard in defense of it."

In *Powell* vs *Alabama*, 287 U.S. 45, the Court held

> "Notice and hearing, together with a legally competent tribunal having jurisdiction of the case constitute basic elements of the constitutional requirements of due process of law."

In the present instance, the Petitioner was denied the right to proceed with his hearing in the Supreme Court of the State of Connecticut.

In the case of *American Surety* vs *Baldwin*, 287 U.S. 156 the Court said

> "A due process does not require that opportunity be given before entry of judgment to present a defense, but it is enough that it may be presented on appeal from the judgment."

This was denied in the present case.

In the *George Moore Ice Cream Company* vs *Rose*, 289 U.S. 373, the Court held that

> "Due process requires that there be an opportunity to present every available defense but it need not be before the entry of judgment."

In *Brinkerholt-Faris Trust Savings Company* vs *Hill*, 281 U.S. 673, the Court held

> "A violation of the due process clause may be accomplished by the state judiciary in the course of construing an otherwise valid state statute."

The Court went on further to state that

> "The Federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government."

In *Hebert* vs *Louisiana*, 272 U.S. 312, the Court said

> "The 14th Amendment to the Constitution of the United States requires that state action shall be consistent with the fundamental principles of liberty and justice which lie at the basis of all our civil and political institutions."

In *Persing* vs *Reno Stock Brokerage Company*, 96 P. 1051, the Court held that

> "Due process of law within the Constitution, Article 1, Section 8, declaring that no person shall be deprived of life, liberty or property without due process of law, not only requires that a party shall be properly brought into Court, but that he shall have the opportunity in Court to establish any facts which according to the usages of the common law or the provisions of the Constitution will be a protection to himself or property."

In *Darmstatter* vs *City Council of Passaic*, 79 A. 545, 81 N.J. Law 162, the Court said

> "Due process is a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial."

In the *Trustees of the Village of Saratoga Springs* vs *Saratoga Gas Electric Light Power Company*, 107 N.Y.S. 341, 122 Appellate Division 203, order reversed 83 N. E. 693, 191 N.Y. 123, the Court said

> "To make effective the constitutional guarantee of due process of law one must have the right to appeal to the Court whenever it is claimed that the constitutional rights are invaded."

This privilege was denied the Petitioner herein when the Motion to Dismiss by the Respondent was granted.

In *Ives* vs *South Buffalo Ry Co.* 94 N.E. 431, 201 N.Y. 271, the Court said

> "Process of law in its broad sense means law in its regular administration in courts of justice which is but another way of saying that every man's life, liberty and property is to be disposed of in accordance with those ancient and fundamental principles which were in existence when the constitution was adopted."

In *Williams* vs *North Carolina*, 325 U.S. 226, the Court held that

> "State courts cannot avoid review by the United States Supreme Court of their disposition of a constitutional claim by casting it in the form of an unreviewable finding of fact."

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be granted.

Respectfully Submitted.
STANLEY KREUTZER
Attorney for Petitioner

May 16, 1963.

APPENDIX A

Conn. General Statutes, Rev. 1958

Section 36-267 reads: "Registration required of brokers, dealers and salesmen."

"No person, unless exempted, shall sell or offer for sale securities, within or from this state, as a broker, dealer or salesman unless registered as such by the commissioner as provided in this chapter. Persons organized in this state and operated principally for the purpose of promoting the industrial or commercial activity of this state or any political subdivison thereof shall be required to register as salesmen only such number of principal officers or salesmen as the commissioner may determine when such person sells or offers for sale his securities." (1949 Rev. s5973; 1949, Supp. s. 2772d; 1959, PA. 686, s5.)

Section 36-306 reads: "Permit required."

"No person shall sell or offer for sale within or from this state any mining or oil securities unless the issuer of such securities has received permission for the sale of such securities from the commissioner as provided in this chapter. (1949 Rev. s.6011.)

Section 36-313 reads: "General penalty"

"Any person who violates any provision of this chapter, for the violation of which no other penalty is provided, shall be fined not more than two thousand dollars or imprisoned not more than two years or both. (1949 Rev. s. 6017.)

Section 36-265 reads: "Definitions."

"In this chapter, unless the context or subject matter otherwise requires:

(a) "Person" includes an individual, a partnership, a joint stock company, a corporation, a common law trust, an agency or any other association.

(b) "Security" or "securities" means any stock, bond, note, debenture, evidences of indebtedness, certificates of interest or participation in any profit-sharing syndicate agreement, certificates of interest or participation in any syndicate agreement, investment contract, certificates or evidences of interest in any oil, gas or mining lease, certificates of evidences of interest in any oil, gas or mining royalty, certificates or evidences of interest in any property represented to contain, or to be a prospect for, oil, gas or minerals and interests in or under such lands and royalties therefrom, interim certificates or receipts or other instruments commonly known as securities.

(c) "Broker" or "dealer" includes any person, other than a salesman, who in this state shall engage, either for all or part of his time, directly or through an agent or agents, in the business of selling or offering for sale, or soliciting subscriptions to, or orders for, or undertaking to dispose of, or to invite offers for, inquiries about, or shall solicit an offer to buy, purchase or otherwise acquire a security or securities, or shall deal in any manner in any security or securities, within or from this state, whether issued by himself or another person, or in the business of purchasing or otherwise acquiring such securities from another with the purpose of reselling them, or of offering them for sale to the public, for a compensation or commission or at a profit, or a corporation publicly selling or offering for sale its security or securities.

(d) "Salesman" includes every person employed, appointed or authorized by a broker to sell in any manner or offer for sale, within this state, any security or securities to any person.

(e) "Sell" or "offer for sale" includes every disposition or attempt to publicly dispose of a security or interest in a security for any consideration and as a business, or a corporation publicly selling or offering for sale its security or securities. Any security given or delivered with or on account of any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. "Sell" or "offer for sale" also includes an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a subscription or an offer to sell, directly or by agent, circular, letter, advertisement or otherwise; provided nothing herein shall limit or diminish the full meaning of the term "sell" or the term "offer for sale" as construed by the courts of this state.

(f) "Investment counsel" includes any person who, in this state, engages in the business of advising others, either directly or by mail or through publications or writings, as to the value of specific securities or as to the advisability of investing in, purchasing or selling such securities, for a compensation or commission at a profit.

(g) "Agent" includes any person employed, appointed or authorized by an investment counsel to solicit business for such investment counsel within or from this state.

(h) "Mining or oil security" or "mining or oil securities" includes (1) stocks, bonds, notes, debentures, evidences of indebtedness, certificates or evidences of interest or participation, lease or lease rights, investment contracts, certificates or evidences of interest in any corporation producing or proposing to produce oil, gas or minerals; (2) stocks, bonds, notes, debentures, evidences of indebtedness, certificates or evidences of interest or participation, lease or lease rights, investment contracts in any oil, gas or mining lease or royalty trust; (3) certificates or evidences of interest in any property represented to contain or to be a prospect for oil, gas or minerals, and interests in or under such lands or other instruments commonly known as securities.

(i) "Issuer" means and includes every person who has issued, or proposes to or shall hereafter issue, any mining or oil security.

(j) "Commissioner" includes the bank commissioner, the deputy bank commissioner or any person appointed or designated by said bank commissioner to administer this chapter.

APPENDIX B

No. 21911

STATE OF CONNECTICUT

vs

DONALD L. DUNCAN

SUPERIOR COURT
HARTFORD COUNTY
October 19, 1962

DRAFT FINDING

FIRST: The following facts are found:

1. On May 17, 1962, the accused was presented at the Superior Court before the Honorable Thomas E. Troland, Judge, by virtue of a bench warrent and information charging the defendant with selling and offering for sale within this State mining or oil securities without receiving permission for the sale of such securtities from the Bank Commissioner in violations of Sections 36-306 and 36-313 of the General Statutes of Connecticut, Revision of 1958; and in addition a Second Count was included in said information, charging the accused with failure to register as a broker, dealer or salesman; and that in New Britain on sundry dates in 1962 the accused offered, sold or offered for sale securities within the state as a broker, dealer or salesman without being registered as a broker, dealer or salesman by the Bank Commissioner in violation of Sections 36-267 and 36-313 of the General Statutes of the State of Connecticut, Revision of 1958.

2. On said May 17, 1962 at a hearing before Honorable Thomas E. Troland, Lieutenant O'Brien of the Connecticut State Police did make a statement to the Court that the accused sold a total of $72,000.00 worh of securities to

a Mr. Litchfield, and that he understood from the Land Commissioner that these oil leases were worth less than $500.00 and were auctioned off at ten cents an acre, and that these oil leases were of very little and of no value.

3. On June 22, 1962 counsel for the accused made a motion that Judge Thomas F. Troland disqualify himself from presiding at the trial of the accused because of the statements having been made to him during the proceedings of May 17, 1962, some of which did not pertain to the information contained in the warrent, and were statements highly detrimental and inadmissable on trial and might in some way affect the decision of the Court.

4. Said matter was heard on June 26th and June 27th by the Honorable Thomas F. Troland, he having denied the request to disqualify himself.

5. The defendant represented himself as being the owner of certain oil and gas leases in the State of New Mexico.

6. The defendant is neither an officer, owner, or employee of the New Mexico Oil and Gas Lease Exchange.

7. The accused did not engage as a broker or dealer directly or through an agent in the business of selling or offering for sale, or solicitating subscriptions to or orders for or undertaking to dispose of or to invite offers for or inquiries about or solicited any offer to buy, purchase or otherwise acquire a security or securities or dealt in any manner in any security or securities within the State of Connecticut, or offer them for sale to the public or publicly dispose of any securities for a compensation or commission or a profit.

8. The accused did not act as a salesman for any other broker or dealer.

9. The accused offered for sale in the State of Connecticut to only one person leases owned by the accused.

10. The accused offered to sell and did sell oil leases to one Herbert E. Litchfield, he being the only customer of the accused in the State of Connecticut.

11. The accused made no attempt to sell any oil leases in the State of Connecticut directly or indirectly to any one other than Herbert E. Litchfield.

12. The accused did not in a public manner openly, without concealment attempt to buy or sell any securities in the State of Connecticut, he having confined himself to the one individual Herbert E. Litchfield.

13. The accused was not a salesman employed, appointed or authorized by a broker to sell in any manner or offer to publicly dispose in any manner within the State any security or securities to any person.

14. The accused did not conduct a brokerage business in Connecticut.

15. The accused was not an agent for an oil and gas lease company.

16. Any interest in real estate, whether it be oil, gas or mining rights, constitute a real estate transaction and not a security transaction.

17. Section 36-265 Connecticut General Statutes, section e, defines selling or offering for sale as it appears in section c, to be sold or offered for sale includes every disposition or attempt to publicly dispose of a security or interest in a security for any consideration and as a business or corporation publicly selling or offering for sale its security or securities. Any security given or delivered with or on account of any purchase of securities or any other thing shall

be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. "Sell" or "offer for sale" also includes an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a solicitation of an offer to buy, purchase or otherwise acquire, from the solicitor or from another, whether the solicitor acts or seeks to act as principal or as agent for the buyer or for the seller, a subscription or an offer to sell, directly or by agent, circular, letter, advertisement or otherwise; provided nothing herein shall limit or diminish the full meaning of the term "sell" or the term "offer for sale" as construed by the courts of this state.

18. That Section 36-305 Connecticut General Statutes excludes sections 36-306 to sections 36-311 from all the requirements of said sections if the mining or oil securities of an issuer, all of whose mines, plants or properties are situated within a state.

19. The statutes pertaining to the licensing of salesmen and brokers is discriminatory, inasmuch as it excludes mines or properties situated within the state.

20. Said transaction with Herbert E. Litchfield is a real estate transaction and is governed by the licensing requirements for a real estate salesman and broker.

The Defendant
By Monroe S. Gordon
His Attorney.

No. 24944

State of Connecticut

vs

Donald L. Duncan

SUPREME COURT OF ERRORS
HARTFORD, CONNECTICUT
OCTOBER 25, 1962

MOTION TO DISMISS APPEAL

The appellee respectfully moves that the appeal in the above-entitled matter be dismissed because the appellant has failed to file within the time allowed his Request for Finding stating the questions of law which he desires to have reviewed.

Respectfully submitted,
State of Connecticut
By s/George D. Stoughton
Assistant State's Attorney

December 4, 1962

The motion by the State to Dismiss the Appeal from the Superior Court in Hartford County is granted.

By the Court

Baldwin, C. J.

No. 24944

STATE OF CONNECTICUT

vs

DONALD L. DUNCAN

Superior Court
Hartford County
November 26, 1962

REQUEST FOR DRAFT FINDING

The Defendant requests, for the purpose of his appeal in the above entitled matter, a finding by the Court, and annexes hereto a draft of such findings as he deems necessary to present these questions and the questions of law which he intends to have reviewed.

The Defendant
By Monroe S. Gordon
His Attorney

No. 24944

State of Connecticut

vs

Donald L. Duncan

Superior Court
Hartford County
November 26, 1962

AMENDED DRAFT FINDING

FIRST:

The following facts are found:

1. On May 17, 1962, the accused was presented at the Superior Court before the Honorable Thomas E. Troland, Judge, by virtue of a bench warrent and information charging the defendant with selling and offering for sale within this State mining or oil securities without receiving permission for the sale of such securities from the Bank Commissioner in violation of Sections 36-306 and 36-313 of the General Statutes of Connecticut, Revision of 1958; and in addition a Second Count was included in said information charging the accused with failure to register as a broker, dealer or salesman; and that in New Britain on sundry dates in 1962 the accused offered, sold or offered for sale securities within the state as a broker, dealer or salesman without being registered as a broker, dealer or a salesman by the Bank Commissioner in violation of Sections 36-267 and 36-313 of the General Statutes of the State of Connecticut, Revision of 1958.

2. On said May 17, 1962 at a hearing before Honorable Thomas E. Troland, Lieutenant O'Brien of the Connecticut State Police did make a statement to the Court that the accused sold a total of $72,000.00 worth of securities to a Mr. Litchfield, and that he understood from the Land Commissioner that these oil leases were worth less than $500.00 and were auctioned off at ten cents an acre, and that these oil leases were of very little and of no value.

3. On June 22, 1962 counsel for the accused made a motion that Judge Thomas E. Troland disqualify himself from presiding at the trial of the accused because of the statement having been made to him during the proceedings of May 17, 1962, some of which did not pertain to the information contained in the warrant, and were statements

highly detrimental and inadmissable on trial and might in some way affect the decision of the Court."

4. Said matter was heard on June 26th and June 27th by the Honorable Thomas E. Troland, he having denied the request to disqualify himself.

5. The defendant represented himself as being the owner of certain oil and gas leases in the State of New Mexico.

6. The defendant is neither an officer, owner, or employee of the New Mexico Oil and Gas Lease Exchange.

7. The accused did not engage as a broker or dealer directly or through an agent in the business of selling or offering for sale, or soliciting subscriptions to or order for or undertaking to dispose of or to invite offers for or inquiries about or solicited any offer to buy, purchase or otherwise acquire a security or securities or dealt in any manner in any security or securities within the State of Connecticut, or offer them for sale to the public or publicly dispose of any securities for a compensation or commission or a profit.

8. The accused did not act as a salesman for any other broker or dealer.

9. The accused offered for sale in the State of Connecticut to only one person leases owned by the accused.

10. The accused offered to sell and did sell oil leases to one Herbert E. Litchfield, he being the only customer of the accused in the State of Connecticut.

11. The accused made no attempt to sell any oil leases in the State of Connecticut directly or indirectly to any one other than Herbert E. Litchfield.

12. The accused did not in a public manner openly, without concealment, attempt to buy or sell any securities in the State of Connecticut, he having confined himself to one individual Herbert E. Litchfield.

13. The accused was not a salesman employed, appointed or authorized by a broker to sell in any manner or offer to publicly dispose in any manner within the State any security or securities to any person.

14. The accused did not conduct a brokerage business in Connecticut.

15. The accused was not an agent for an oil and gas lease company.

16. Any interest in real estate, whether it be oil, gas or mining rights, constitute a real estate transaction and not a security transaction.

17. Section 36-265 Connecticut General Statutes, section c, defines selling or offering for sale as it appears in section c, to be sold or offered for sale includes every disposition or attempt to publicly dispose of a security or interest in a security for any consideration and as a business or corporation publicly selling or offering for sale its security or securities. Any security given or delivered with or on account of any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. "Sell" or "offer for sale" also includes an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a solicitation of an offer to buy, purchase or otherwise acquire, from the solicitor or from another, whether the solicitor acts or seeks to act as principal or as agent for the buyer or for the seller, a subscription or an offer to sell, directly or by agent, circular, letter, advertisement or otherwise;

provided nothing herein shall limit or diminish the full meaning of the term "sell" or the term "offer for sale" as construed by the courts of this state.

18. That section 36-305 Connecticut General Statutes excludes sections 36-306 to sections 36-311 from the requirements of said sections if the mining or oil securities of an issuer, all of whose mines, plants or properties are situated within a state.

19. The statutes pertaining to the licensing of salesmen and brokers is discriminatory, inasmuch as it excludes mines or properties situated within the state.

20. Said transaction with Herbert E. Litchfield is a real estate transaction and is governed by the licensing requirements for a real estate salesman and broker.

SECOND

The following conclusions have been drawn from the facts:

1. That the Honorable Thomas E. Troland, Judge, should have disqualified himself from presiding at the trial because of statements made to him concerning the of the case prior to the actual trial of the case, which statements were highly detrimental and would have been inadmissable on the trial of said case.

2. The accused did not engage as a broker or dealer directly or through an agent and the business of selling or offering for sale or solicit the subscription to or orders for or undertaking to dispose of or to invite offers for or otherwise acquire a security or securities or dealt in any manner in any security or securities within the State of Connecticut.

or offered them for sale to the public or publicly dispose of any securities for a compensation or commission or a profit.

3. The accused did not act as a salesman for any broker or dealer, nor did he publicly offer for sale, nor did he attempt to publicly dispose of any securities in the State of Connecticut.

4. The accused confined his sale to only one person in the State of Connecticut, and had no other customers in the State of Connecticut.

5. The accused did not conduct a brokers business in Connecticut.

6. Said transaction with Herbert E. Litchfield is a real estate transaction and is governed by the licensing of a real estate salesman and broker.

THIRD:

The Defendant made the following claims of law respecting the judgment to be rendered upon which the Court ruled as hereinafter stated:

1. That the defendant did not engage, in the State of Connecticut, in the security business as a salesman.

2. That the defendant did not, in the State of Connecticut, engage in the brokerage business as a broker.

3. That the defendant was not guilty of violating section 36-306 and 36-315 of the General Statutes of Connecticut, Revision of 1958, or sections 36-367 and sections 313 of the General Statutes of the State of Connecticut Revision of 1958.

FOURTH:

The questions of law sought to be reviewed:

1. Whether or not the defendant is guilty under all the facts.

2. Whether or not the defendant is guilty notwithstanding the fact that the sale, offering to sell, and his clientel in the State of Connecticut, was confined to one person.

3. Whether or not the transaction comes under the statute governing the licensing of real estate salesmen and brokers.

4. Whether or not the Honorable Thomas E. Troland, Judge, erred in failing to disqualify himself after having heard facts prior to the trial, which facts normally would not be admissable in the trial of the case.

The Defendant
By Monroe S. Gordon
His Attorney

No. 21911

STATE OF CONNECTICUT
vs
DONALD L. DUNCAN

SUPERIOR COURT
HARTFORD COUNTY

NOVEMBER 28, 1962

MOTION FOR PERMISSION TO FILE A REQUEST FOR FINDING AND PERMISSION TO AMEND THE DRAFT FINDING

The appellant herein respectfully requests permission to amend the Draft Finding in order to include a Request

for a Finding, the conclusions of the Court, claims of Er made in the Trial Court with the rulings of the Court thereon, and other rulings in the trial.

The Appellant desires to amend the Draft Findings as filed by his attorney as the Draft Finding does not comply with the procedure as set forth in Section 389 of the Practice Act.

There is a serious question of law involved in the above entitled matter which should be reviewed by the Supreme Court. Should the Appellant be denied to have said question of law reviewed because of the inadequacy of his counsel, a great injustice may result to the Appellant.

The appellant has completed a Request for a Finding and a Corrected Draft Finding in accordance with the procedures set forth in Section 389, should the Court see fit to grant said application to amend.

The questions of law sought to be reviewed in the original Draft Finding, although not properly enumerated as provided for in Section 389, are included in said Draft Finding.

The Defendant
By Monroe S. Gordon
His Attorney

ORDER

The above motion having been heard on the ___ day of _____, it is hereby ORDERED That the Defendant be permitted to file his Request for Finding, permission to Amend the Draft Finding, on or before the ___ day of _____, A.D., 1962.

By the Court

_____
Clerk

No. 24911

STATE OF CONNECTICUT

vs

DONALD L. DUNCAN

SUPREME COURT
HARTFORD COUNTY

December 11, 1962

MOTION TO REARGUE

The Defendant respectfully requests permission to reargue the Court's Decision of December 10, 1962, dismissing the apeal in the above entitled action, for the following reasons:-

1. On November 29, 1962 the Defendant filed with the Clerk of the Superior Court a Motion for Permission to file a Request for Finding and Permission to Amend the Draft Finding in order to comply with the procedure as set forth in Section 389 of the Practice Act.

2. Said motion was pending before the Superior Court on December 4th, 1962, when a hearing was held before the Supreme Court on the motion to dismiss, and was still pending on December 10, 1962, when the Court dismissed the appeal.

3. Said dismissal was inconsistent with a ruling of the Court in the case of *Alice M. More* vs *Steve Urbano*, reported in the Connecticut Law Journal, Volume 24, No. 2, on November 13, 1962.

4. Said ruling of the Supreme Court is inconsistent with the law as recited in the case of *Schollfield Gear & Pulley Company* vs *Schollfield*, 70 Conn. at page 504, wherein it is stated that the Court, without any request for a finding, on its own motion may make a finding of facts.

5. The Defendant feels that the matter is of such importance involving the freedom of the Defendant, that the Court should hear further arguments concerning the Motion for Permission to Amend the Draft Finding, which motion the Court did not act upon.

The Defendant
By Monroe S. Gordon
His Attorney

ORDER

The above motion having been heard on the _____ day of _____, 1962, it is hereby ORDERED That the Motion to Reargue

By the Court

_____
Clerk

SUPREME COURT OF THE UNITED STATES

No. , October Term, 1962

DONALD L. DUNCAN,
Petitioner,

vs

CONNECTICUT

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby extended to and including May 13th, 1963.

s/ JOHN M. HARLAN
Associate Justice of the Supreme
Court of the United States

Dated this 9th day of
April, 1963.

SUPREME COURT OF THE UNITED STATES

No. , October Term, 1962

DONALD L. DUNCAN,

Petitioner,

vs

CONNECTICUT

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby extended to and including May 20th, 1963.

s/ JOHN M. HARLAN
Associate Justice of the Supreme
Court of the United States

Dated this 13th day of
May, 1963.

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FILED
MAY 29 1963
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 1115 [redacted]

DONALD L. DUNCAN,
Petitioner,

vs.

STATE OF CONNECTICUT,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JOHN D. LABELLE,
State's Attorney
for Hartford County

GEORGE D. STOUGHTON
Assistant State's Attorney

HARRY W. HULTGREN, JR.
Assistant State's Attorney

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 1115 Misc.

DONALD L. DUNCAN,
Petitioner,

vs.

STATE OF CONNECTICUT,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

The petitioner, Donald L. Duncan, was charged with having committed a crime in Connecticut and he elected to be tried by the Court. He made this election on a substituted information when he was presented for trial on June 26, 1962, and *after* his motion for disqualification had been denied. On June 27, 1962, he was found guilty. On June 29, 1962, the Court sentenced petitioner, and on the same date Duncan appealed to the Supreme Court of Errors of the State of Connecticut.

Petitioner filed a Motion to Extend Time for Filing Draft Finding and Assignment of Errors. His motion was dated September 12, 1962. There was no objection and on September 20, 1962, the time for filing Request for and Draft Finding and Assignment of Errors was extended to October 23, 1962.

Petitioner filed a document which he called a Draft Finding and which was dated October 19, 1962. (App. B to Petitioner's Brief, p. 14)

On October 25, 1962, respondent filed his Motion to Dismiss the Appeal upon the ground that the petitioner had failed to file within the time allowed his Request for Finding stating the questions of law which he desired to have reviewed. (App. B to Petitioner's Brief, p. 18)

There was a hearing upon the Motion by the Supreme Court of Errors and on December 4, 1962, the Motion to Dismiss was granted. (App. B to Petitioner's Brief, p. 18)

Thereafter, petitioner filed the Motion for Permission to Reargue which appears on page 27 of Appendix B to his Brief. This Motion was denied on January 2, 1963.

QUESTION PRESENTED

Where petitioner, represented by private counsel, failed utterly to follow the long-established Rules of Practice of the Supreme Court of Errors of the State of Connecticut so that, upon motion by the respondent, his appeal was dismissed, does the decision of the State Court rest upon an independent and adequate state ground?

ARGUMENT

Point A

Dismissal of the Appeal rested upon an independent and adequate state ground.

SECTION 54-95 of the General Statutes of Connecticut permits an appeal by the defendant in a criminal case.

The right to appeal is not a constitutional right nor one based upon principles of natural justice.

State v. Zukauskas, 132 Conn. 450, 45 A. 2d 289

SECTION 52-264 of the General Statutes of Connecticut places the rule-making power in matters concerning appeals in the hands of the Judges of the Supreme Court of Errors. These rules appear in the Connecticut Practice Book. The Connecticut Practice Book is published by a commission which distributes copies without charge to attorneys engaged in actual practice in Connecticut. Authority for this is contained in SECTIONS 51-16 *and* 51-18 of the General Statutes of Connecticut.

The petitioner elected to be tried by the Court and he received a full and fair trial. He appealed from the judgment of the Court, as was his right.

Rule 385 of the Rules concerning appeals requires that there be a finding by the trial court except where error appears on the face of the record. Rule 388 requires that an assignment of errors be filed with the appeal except where a finding is necessary. Petitioner makes no claim that he filed an assignment of errors and his brief appears to concede that a finding was necessary.

Rule 389 sets forth in detail the procedure to be followed where a finding is necessary. It is explicit in stating that the party appealing shall file a request for finding, stating distinctly the questions of law which he desires reviewed. There was a complete and utter failure on the part of petitioner to include in his "Draft Finding" a statement of the questions of law which he desired to have reviewed. (App. B to Petitioner's Brief, p. 14) He makes no claim that he filed a Request for Finding, required by Rule 389. In his brief, he states that he moved for permission to file a Request for Finding on November 28, 1962. This was long after the time which the Court had permitted him had expired. In fact, this motion was not acted upon because the appeal was dismissed. Rule 436 provides for a Motion to Dismiss.

A request for a finding is a necessary step to perfect an appeal where a finding is required. Its purpose is to state the questions it is desired to have reviewed so that the opposing party may know the issues which will be presented upon the appeal and the trial court will be guided in making the finding.

Sec. 128, *Connecticut Appellate Procedure, Second Edition*

Card v. Bissing, 114 Conn. 71, 73; 157 A. 644

Lesser v. Lesser, 134 Conn. 418; 58 A. 2d 512

It is submitted that the Supreme Court of Errors acted properly in dismissing petitioner's appeal and that its action rested upon adequate state procedural grounds.

Point B

The action of the State Court does not present a question for review.

A decision of a state court resting on grounds of state procedure does not present a federal question, unless by its terms or in its application it violates the federal constitution.

French v. Hopkins, 8 S. Ct. 589; 124 U.S. 524; 31 L. ed 536

Griffin v. Illinois, 76 S. Ct. 585; 351 U.S. 12; 100 L. ed 891

Daniels v. Allen, 73 S. Ct. 397; 344 U.S. 443; 97 L. ed 469

Where the Supreme Court of a state holds that it is powerless to pass upon the merits of a case or the rulings below because its appellate jurisdiction is not invoked in accordance with the laws of the state, the Supreme Court of

the United States will not review its judgment.

John v. Paullin, 34 S. Ct. 178; 231 U.S. 583; 58 L. ed. 381
Daniels v. Allen, 73 S. Ct. 397; 344 U.S. 443; 97 L. ed 469
United States v. Smith, 306 F. 2d 596

This principle should have equal force where the Supreme Court of a state refuses to hear an appeal because it has not been prosecuted in accordance with its rules.

CONCLUSION

It is respectfully submitted that the decision of the Supreme Court of Errors of the State of Connecticut dismissing petitioner's appeal rested upon an independent and adequate state ground which ought not to be reviewed, and that the petition for a writ of certiorari should be denied.

Dated: May 27, 1963

Respondent,

State of Connecticut

By JOHN D. LABELLE,
State's Attorney for Hartford County

GEORGE D. STOUGHTON,
Assistant State's Attorney

HARRY W. HULTGREN, JR.
Assistant State's Attorney

APPENDIX

General Statutes of Connecticut, Revision of 1958:

SEC. 51-16. ACQUISITION, PUBLICATION AND DISTRIBUTION OF OFFICAL LEGAL PUBLICATIONS. (a) There shall continue to be a commission to acquire, publish and distribute and to maintain for the benefit of the state a sufficient supply of the official legal publications, which are defined as the Connecticut Reports and advance parts thereof, the Phillips Connecticut Digest and cumulative supplements thereto, the Connecticut Law Journal, the Connecticut Supplement, the digest of Connecticut Supplement decisions and cumulative supplements thereto, the Connecticut Practice Book and cumulative supplements thereto, the Connecticut departmental regulations and such additional publications as may be assigned to it. The commission is declared to be an agency within the judicial department and shall be known as the commission on official legal publications. It shall be composed of the chief justice of the supreme court of errors, who shall be chairman, ex officio; a judge or former judge of said court and a state referee, both of whom shall be appointed by the chief justice; the executive secretary of the judicial department, and the reporter of judicial decisions. It may appoint a selling agent or agents to handle the sales, and a publishing agent or agents to attend to the publication and distribution, under its supervision, of official and legal publications, upon such terms as it deems to be for the best interest of the state. Except to the extent that the commission otherwise appoints, the executive secretary of the judicial department shall be the commission's publishing agent. (b) The commission may utilize for the purposes of sections 4-46, 4-49, 4-50, 4-117 and 51-18 to 51-22, inclusive, any volumes which may be turned over to the state by the town clerks or other public officers or agencies. It may enter into contracts with publishing and printing concerns and others in this or any other state for the printing

or photolithographing and for the binding of such volumes as may be necessary, and for the storage of the volumes. (c) The commission shall have custody of the electroplates and stereotypes of the volumes of reports and may repair and replace the same from time to time when necessary for the proper printing therefrom. It may also sell any of said electroplates or stereotypes when in its opinion the same are no longer of use to the state. (d) Money received from sales permitted under this section and sections 51-18 and 51-23 shall be deposited with the state treasurer as provided by law and shall be credited to the general fund, and bills contracted and expenses incurred by the commission for the purposes specified in sections 4-46, 4-49, 4-50, 4-117, this section and sections 51-17 to 51-23, inclusive, shall be paid from moneys appropriated from the general fund.

SEC. 51-18. SALE AND DISTRIBUTION OF PUBLICATIONS. The commission may sell the official legal publications at such prices and upon such terms as to payment and security as it may fix and may sue in its name or take such other legal measures as may be appropriate to enforce payment of accounts due it. It shall furnish official legal publications free of charge to courts of record and law libraries within the state, and to public officers, departments, agencies, boards and commissions within the state, according to their legitimate needs as determined by the commission. It shall also furnish copies of the Connecticut Practice Book and supplements thereto, free of charge, to attorneys engaged in actual practice in Connecticut, according to their legitimate needs as determined by the commission. It shall, to the extent it finds it desirable to do so, cause official legal publications to be copyrighted in the name of the secretary of the state for the benefit of the people of the state.

SEC. 52-264. JUDGES OF SUPREME COURT TO MAKE RULES FOR APPEALS AND WRITS OF ERROR. The judges of the supreme court of errors shall make such orders and rules as they deem necessary concerning the practice and procedure in the taking of appeals and writs of error to the supreme court of errors, and concerning the giving of security by the appealing party, stay of execution during the pendency of appeal, the payment of costs and the taxation of reasonable costs when the same have not been fixed by statute.

SEC. 54-95. APPEAL BY DEFENDANT IN CRIMINAL PROSECUTION; STAY OF EXECUTION. (a) Any defendant in a criminal prosecution, aggrieved by any decision of the superior court or the court of common pleas, upon the trial thereof, or by any error apparent upon the record of such prosecution, may be relieved by appeal, petition for a new trial or writ of error, in the same manner and with the same effect as in civil actions; provided no appeal to the supreme court of errors may be taken from a judgment denying a petition for a new trial unless, within ten days after the judgment is rendered, the judge who heard the case or a justice of the supreme court of errors certifies that a question is involved in the decision which ought to be reviewed by the supreme court of errors; and it shall be sufficient service of any such writ of error or petition for a new trial to serve it upon the state's attorney for the county or prosecuting attorney for the county or district where it is brought. (b) When such defendant is convicted and sentenced to a term of imprisonment and, within one week after such conviction, files with the clerk of the court wherein such conviction was had an appeal to the supreme court of errors or notice of an appeal to said court or of a petition for a new trial, such appeal or such notice shall operate as a stay of execution pending the final determination of the case unless within five days the

judge before whom such criminal prosecution is tried otherwise directs in writing and accompanies such direction by a written statement of his reasons therefor. Such statement shall become a part of the files and record of said case. (c) In any criminal prosecution in which the defendant has been sentenced to death and has taken an appeal to the supreme court of errors of this state or the supreme court of the United States or brought a writ of error, writ of certiorari or petition for a new trial, the taking of the appeal, the making of the application for a writ of certiorari or the return into court of the writ of error or petition for a new trial shall, unless, upon application by the state's attorney and after hearing, the supreme court otherwise orders, stay the execution of the death penalty until the clerk of the court where the trial was had has received notification of the termination of any such proceeding by decision or otherwise, and for thirty days thereafter. No appellate procedure shall be deemed to have terminated until the end of the period allowed by law for the filing of a motion for reargument, or, if such motion is filed, until the proceedings consequent thereon are finally determined. When execution is stayed under the provisions of this section, the clerk of the court shall forthwith give notice thereof to the warden of the State Prison or his deputy. If the original judgment of conviction has been affirmed or remains in full force at the time when such clerk has received such notification of the termination of any proceedings by appeal, writ of certiorari, writ of error or petition for a new trial, and the day designated for the infliction of the death penalty has then passed or will pass within thirty days thereafter, the defendant shall, within said period of thirty days, upon an order of the court in which such judgment was rendered at a regular or special criminal session thereof, be presented before said court by the warden of the State Prison or his deputy, and the court, with the judge assigned to hold such session presiding, shall thereupon designate a day for the infliction of the death

penalty and the clerk of the court shall issue a warrant of execution, reciting therein the original judgment, the fact of the stay of execution and the final order of the court, which warrant shall be forthwith served upon the warden or his deputy.

The Connecticut Practice Book of 1951; Rules for the Supreme Court of Errors:

SEC. 385. FINDING NECESSARY, WHEN. If error appears on the face of the record no finding is necessary.

If the error claimed is in rulings upon the admission or rejection of evidence or other rulings in the court of the trial, in the charge to the jury or in conclusions of law or fact that do not appear upon the face of the record, a finding by the trial court is necessary.

If on an appeal from the granting of a motion to set the verdict aside the appellant desires to present such rulings, or if the decision upon the motion is based on such rulings, a finding is necessary, and should be in the form for findings in cases tried to the jury.

SEC. 388. ASSIGNMENT OF ERRORS, WHEN FILED. If no finding of facts be necessary to present properly the questions raised upon the appeal, the appellant shall file his assignment of errors with his appeal. If a finding is necessary, he shall file his assignment of errors within ten days from the filing of the finding. Assignments of error shall be filed with the clerk with whom the appeal was filed, and shall be in substantial accordance with Forms 561 and 562.

If the nature of the appeal is such as to require a finding, but before one is filed the appellant decides to withdraw so much of the appeal as makes a finding necessary, he shall file with the clerk a written notice of that withdrawal, accom-

panied by his assignments of errors as to that part of the appeal not so withdrawn.

SEC. 389. REQUEST FOR FINDING; COUNTER FINDING. In cases tried to the court, where a finding is necessary for the purposes of the appeal, the party appealing shall file, with his appeal, his request therefor, duly signed, stating distinctly the questions of law which he desires reviewed, and annex thereto a draft of such findings as he deems necessary to present these questions. The draft finding shall contain, under separate headings, a statement, in consecutive, numbered paragraphs, of the relevant and material facts proven, the conclusions of the court, the claims of law made in the trial court with the rulings of the court thereon, and the rulings on evidence or other rulings on the trial which the appellant desires to have reviewed. The draft shall be in substantial conformity with Form 559, and statements of rulings on evidence shall comply with SEC. 405.

The clerk shall forthwith mail a copy of the request and draft finding to opposing counsel, who shall, within ten days from the filing of the draft finding, file with the clerk a counter finding which shall state the paragraphs of the draft finding which are not contested and shall contain *only* such relevant and materials facts as are not in the draft finding, or such facts, conclusions, claims of law and rulings which arose in the trial as are claimed by him to be incorrectly stated in the draft finding.

Failure or refusal to file a counter finding within the time fixed by rule or order of court may be penalized by the imposition by the trial court of costs not to exceed twenty-five dollars for the use of the state.

SEC. 436. ALL DEFECTS TO BE RAISED BY MOTION; PROCEEDINGS THEREON. Any claim that an appeal or writ of error should be abated or dismissed,

whether based on lack of jurisdiction, failure to file papers within the time allowed, failure to prosecute with proper diligence or any other ground, shall be made by a motion to dismiss the appeal or writ. Any such motion must be filed in accordance with SEC. 438 within ten days after the filing of the appeal or the return day of the writ, or if the ground alleged subsequently occurs, within ten days after it has arisen, provided, a motion based on lack of jurisdiction or a failure to prosecute with proper diligence may be filed at any time. One copy of the motion shall be transmitted by the clerk by mail forthwith to the adverse party or his counsel of record. If the motion raises only an issue of law or alleges no facts not of record, no pleading need be filed to it, but the issue will be heard as one of law. If facts outside the record are alleged, the adverse party may file an answer within one week from the filing of the motion; and any pleadings necessary to close issues of fact may thereafter be filed within one week after the filing of the pleading to which they are addressed. Neither the motion nor any subsequent pleading shall be filed after the time herein limited, nor shall any amendment to any such pleading be filed, except on written motion and by consent of this court or, if it is not in session, of one of its justices; if such motion is presented to a justice, he shall indorse it with his action thereon and the party making the motion shall file it, so indorsed, with the clerk of the court where the case was tried, who shall give notice to those persons to whom copies of motions are required to be sent under SEC. 438.